

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WASHINGTON

THE TERREMORE TRUST,

Plaintiff,

V.

No. CV-04-370-FVS

ORDER GRANTING MOTION TO
DISMISS

JAMES J. SCHIRO,
ZURICH FINANCIAL SERVICES, and
JOHN DOES 1 through 4,

Defendants.

BEFORE THE COURT is the Defendants' Motion to Dismiss, Ct. Rec.

18. The Defendants, Zurich Financial Services (ZFS) and James Schiro, are represented by Gregory Johnson and Donald Stone. The Plaintiff Terremore Trust is represented by *pro se* litigant Terrence L. Mosely.

I. BACKGROUND

Mr. Mosely was involved in an automobile accident on June 1, 2001, with Jan Supanchick. Ms. Supanchick had previously been insured by Farmers Insurance, but was not insured at the time of the accident. Shortly after the accident she went into a Farmers Insurance office to renew her insurance coverage. Coverage was initiated with a start time of 12:01 a.m. on June 1, 2001, the day of the accident. However, thereafter, Farmers Insurance discovered that Ms. Supanchick's accident occurred before she renewed her coverage.

1 Consequently, her coverage start time was amended to reflect the time
2 she walked into the Farmers Insurance office, after the accident.

3 Mr. Mosely filed a claim with Farmers Insurance seeking
4 compensation for property damage to his vehicle. He was compensated
5 \$1,270.34 for repairs to his vehicle. In July of 2001, Mr. Mosely
6 contacted a local Farmers Insurance office about receiving medical
7 benefits for injuries resulting from the automobile accident. On
8 August 16, 2001, Mr. Mosely received a letter from Farmers Insurance
9 stating Mr. Mosely would not be getting medical benefits because Ms.
10 Supanchick's policy was not in force at the time of the accident.
11 Farmers Insurance informed Mr. Mosely that it would not seek
12 reimbursement for the money it paid Mr. Mosely for car repairs.
13 Mosely later received \$5,900 from his own insurance company for
14 medical therapy and special damages in July and August 2001.

15 Thereafter, Mr. Mosely filed a consumer complaint against
16 Farmers Insurance with the Office of the Insurance Commissioner
17 (OIC). Mr. Mosely alleged that Farmers Insurance used "threat(s),
18 intimidation, unlawful coercion, and oppression" in denying Mr.
19 Mosely's personal injury claim. Complaint, Exhibit Letter from
20 William Kirby, OIC Staff Attorney, to Terrence Mosely dated 1/29/02.
21 Next, Mr. Mosely filed a Notice of Mediation and Notice of Intent to
22 Arbitrate against Farmers Insurance and its claims professionals
23 pursuant to RCW 11.96A.300. Farmers Insurance declined to
24 participate in mediation or arbitration because RCW 11.96A.300
25 governs trusts and estate disputes, not insurance disputes.

26 In February 2003, Mr. Mosely pursued litigation against Farmers

1 Insurance in Spokane County Superior Court. Farmers Insurance
 2 obtained dismissal on summary judgment. Mr. Mosely then embarked on
 3 a letter-writing campaign directed to Defendant James Schiro, CEO of
 4 Zurich Financial Services (ZFS), as well as various other employees
 5 of ZFS affiliates. ZFS is the "ultimate corporate parent of Farmers
 6 Group, Inc., which provides insurance management services to, but
 7 does not directly or indirectly own, Farmers Insurance Company of
 8 Washington."¹ ZFS is domiciled abroad and is governed pursuant to
 9 Swiss law.

10 Plaintiff Terremore Trust, by and through *pro se* litigant
 11 Terrence Mosely, filed this action against Mr. Schiro and ZFS
 12 alleging four claims: (1) violation of 18 U.S.C. §§ 1962(a) and (d)
 13 of the Racketeer Influenced and Corrupt Organizations Act ("RICO");
 14 (2) violation of 18 U.S.C. § 1503 (obstruction of justice); (3)
 15 violation of Section 9A.56.130 of the Revised Code of Washington
 16 (extortion); and (4) fraud. The basic premise of the Complaint is
 17 that the Defendants failed to respond to Mr. Mosely's previous
 18 demands in a satisfactory manner. Terremore Trust is the named
 19 Plaintiff in this action rather than Mr. Mosely because, as he
 20 admits, Mr. Mosely lacks standing as an individual to bring this
 21 lawsuit. Complaint, ¶ 3.3.

22 The Defendants now move to dismiss Plaintiff's Complaint on four
 23 independent grounds. The Defendants argue Mr. Mosely, as a *pro se*
 24 litigant, cannot represent the Terremore Trust in an action in
 25 federal court. Further, the Defendants move to dismiss for

26 ¹ Plaintiff submitted no evidence to the contrary.

1 insufficient service pursuant to Fed.R.Civ.P. 12(b) (5), lack of
2 personal jurisdiction pursuant to Fed.R.Civ.P. 12(b) (2), and failure
3 to state a claim pursuant to Fed.R.Civ.P. 12(b) (6).

4 **II. DISCUSSION**

5 **A. *Terrence Mosely, as a pro se litigant, cannot act on behalf***
of Terremore Trust in this action.

6 The general rule in federal litigation is that a non-attorney
7 can represent himself on his own behalf. See 28 U.S.C. § 1654
8 (stating that "[i]n all courts of the United States the parties may
9 plead and conduct their own cases . . ."); see also *C.E. Pope Equity*
10 *Trust v. United States*, 818 F.2d 696, 697 (9th Cir. 1987). Although
11 an individual has the right to represent himself, an individual does
12 not have the right to appear on behalf of anyone other than himself.
13 *C.E. Pope Equity Trust*, 818 F.2d at 697 (citing *Russell v. United*
14 *States*, 308 F.2d 78, 79 (9th Cir. 1962); see also *Koleflier v. United*
15 *Bank of Bismark*, 20 F.3d 347 (8th Cir. 1994)). More specifically, a
16 party's status as trustee does not include the right to present *pro*
17 *se* arguments in federal court. *C.E. Pope Equity Trust*, 828 F.2d at
18 698.

19 Here, Mr. Mosely refers to himself as the representative of
20 Plaintiff Terremore Trust. Mr. Mosely provided documentation showing
21 himself as the creator of the Terremore Trust, but the record does
22 not disclose the beneficiaries of the trust. As a *pro se* litigant,
23 Mr. Mosely has the right to represent himself, but this right does
24 not include the authority to represent the Terremore Trust in matters
25 before this Court. If Mr. Mosely is in fact a trustee of the
26 Terremore Trust, Mr. Mosely would have the right to sue in the

1 trust's name without joining those parties for whose benefit the suit
2 is being brought. Fed.R.Civ.P. 17(a). This rule does not, however,
3 extend to Mr. Mosely the right to maintain a lawsuit representing the
4 trust *pro se*. See *C.E. Pope Equity Trust*, 828 F.2d at 698.
5 Therefore, the Court concludes that Mr. Mosely, as a *pro se* litigant,
6 cannot pursue claims for the Plaintiff Terremore Trust. Accordingly,
7 the Defendants' motion to dismiss on this basis is granted.

8 **B. Service of Process**

9 The Court cannot exercise personal jurisdiction over a defendant
10 without proper service of process. *Omni Capital Int'l, Ltd. v. Wolff*
11 & Co., 484 U.S. 97, 104, 108 S.Ct. 404, 98 L.Ed.2d 415 (1987).
12 Insufficient service of process can result in dismissal under Federal
13 Rule of Civil Procedure 12(b)(5). To determine whether service of
14 process was proper, the Court looks to Federal Rule of Civil
15 Procedure 4. Under Rule 4(h)(1), service upon a foreign corporation
16 may be effected pursuant to the law of the state in which the
17 district court is located, or by serving an officer, a managing or
18 general agent, or any agent authorized by appointment or by law to
19 receive service of process.

20 Here, Plaintiff attempted to serve Defendants ZFS and Mr. Schiro
21 via substituted service by the OIC, pursuant to RCW 48.05.215 and RCW
22 48.15.150. No other attempt has been made to serve ZFS or Mr.
23 Schiro. Pursuant to RCW 48.05.200, foreign and alien insurers are
24 required to appoint the Insurance Commissioner as the agent for
25 receipt of service. RCW 48.15.150 then allows for substituted
26 service on a foreign insurer via the OIC with respect to "any cause

1 of action arising in [] [Washington] under any contract issued by []
2 [the unauthorized insurer] as a surplus line contract." RCW
3 489.15.150(1). RCW 48.05.215 allows for substituted service via the
4 OIC upon any "[unauthorized] foreign or alien insurer ... who ...
5 solicits insurance business in ... [Washington] or transacts
6 insurance business in [Washington][]" RCW 48.05.215(1).

7 These statutes are not applicable to the Defendants because
8 neither of the Defendants are an insurance company. Mr. Schiro is an
9 individual, not an insurer. ZFS maintains, and Plaintiff has not
10 presented any evidence to the contrary, that it is a holding company,
11 not an insurer. Therefore, neither of the Defendants are subject to
12 the statutory provisions governing substituted service on foreign
13 unauthorized insurers.

14 Further, even if the Defendants were subject to service by the
15 OIC under RCW 48.15.150 and RCW 48.05.215, the attempted service by
16 the OIC would still be defective. Pursuant to RCW 48.15.150(2), the
17 OIC must deliver the summons and complaint to the non-resident
18 insurer at its last known principal place of business. The documents
19 naming Mr. Schiro and ZFS as defendants in this action were
20 improperly sent to Zurich American Insurance Company (ZAIC), a Zurich
21 North America company, located at 1400 American Lane, Schaumburg,
22 Illinois. Neither Mr. Schiro nor ZFS reside or maintain an office at
23 that location. Further, ZFS maintains, and Plaintiff has not
24 presented any evidence to the contrary, that ZAIC and the other
25 Zurich North America companies are entities distinct from both ZFS
26 and any Farmers Insurance entity. Moreover, ZAIC and its employees,

1 including Daina Kojelis (the person to whom the Summons and Complaint
2 were directed), are not authorized to accept service of process on
3 behalf of Mr. Schiro or ZFS. Therefore, even if service by the OIC
4 was permissible in this instance, the attempted service would still
5 be defective. Since no other attempt has been made to serve the
6 Defendants in accordance with Rule 4, and the attempted service was
7 defective, the Court determines that Defendants' motion to dismiss
8 pursuant to Rule 12(b) (5) is granted.

9 **C. Personal Jurisdiction**

10 Federal Rule of Civil Procedure 12(b) (2) governs dismissal for
11 lack of personal jurisdiction. Where the court bases its
12 jurisdictional findings on affidavits and discovery materials without
13 holding an evidentiary hearing, dismissal is appropriate only if the
14 plaintiff has failed to make out a *prima facie* showing of personal
15 jurisdiction. *Amoco Egypt Oil Co. v. Leonis Navigation Co.*, 1 F.3d
16 848, 850 (9th Cir. 1993). It is the plaintiff's burden to establish
17 the court's personal jurisdiction over a defendant. *Doe v. Unocal*
18 *Corp.*, 248 F.3d 915, 922 (9th Cir. 2001) ("*Unocal*"). "In order to
19 exercise personal jurisdiction over a nonresident defendant in a case
20 presenting a federal question, the district court must first
21 determine that a rule or statute potentially confers jurisdiction
22 over the defendant and then conclude that asserting jurisdiction does
23 not offend the principles of Fifth Amendment due process." *Id.*
24 (citations and quotations omitted). In some instances, a federal
25 statute or rule may authorize service to obtain jurisdiction over a
26 defendant. RICO allows for nationwide service of process, 18 U.S.C.

1 § 1865, but where, as in this case, proper service of the Defendants
 2 should have been effected outside the United States, RICO's service
 3 provisions do not apply. *See Doe v. Unocal Corp.*, 27 F.Supp.2d 1174,
 4 1184 (C.D. Cal. 1998). Where the federal statute or rule on which an
 5 action is premised does not authorize service to obtain jurisdiction
 6 over a defendant, the Court looks to the state's long-arm statute.
 7 Fed.R.Civ.P. 4(k)(1)(A); *see also Unocal*, 248 F.3d at 922.

8 "Washington's long-arm statute authorizes courts to exercise
 9 jurisdiction over nonresident defendants to the extent permitted by
 10 the due process clause of the United States Constitution." *MBM*
 11 *Fisheries Inc. v Bollinger Mach. Shop and Shipyard, Inc.*, 60
 12 Wash.App. 414, 423, 804 P.2d 627, 632 (1991) (citing *Shute v.*
 13 *Carnival Cruise Lines*, 113 Wash.2d 763, 766, 783 P.2d 78 (1989)).
 14 Constitutional due process requirements are met when a nonresident
 15 defendant has "certain minimum contacts with the forum such that the
 16 maintenance of the suit does not offend traditional notions of fair
 17 play and substantial justice." *Int'l Shoe Co. v. Washington*, 326
 18 U.S. 310, 316, 66 S.Ct. 154, 90 L.Ed. 95 (1945). There are two types
 19 of personal jurisdiction: general and specific.

20 General personal jurisdiction applies when the defendant has
 21 "substantial" or "continuous and systematic" contacts with the forum
 22 state, and subjects the defendant to suit in the forum state even on
 23 matters unrelated to the defendant's activities within the forum
 24 state. *Fields v. Sedgwick Associated Risks, Ltd.*, 796 F.2d 299, 301
 25 (9th Cir. 1986). "A court may exercise specific jurisdiction over a
 26 foreign defendant if his or her less substantial contacts with the

1 forum give rise to the cause of action before the court. The
2 question is 'whether the cause of action arises out of or has a
3 substantial connection with that activity.' *Hanson v. Denckla*, 357
4 U.S. 235, 250-253, 78 S.Ct. 1228, 2 L.Ed.2d 1283 (1958)." *Unocal*,
5 248 F.2d at 923.

6 1. Specific Jurisdiction

7 The Ninth Circuit has a three-part test to determine whether
8 specific personal jurisdiction comports with due process: "(1) the
9 defendant must have done some act purposely to avail himself of the
10 privilege of conducting activities in the forum; (2) the claim must
11 arise out of the defendant's forum-related activities; and (3) the
12 exercise of jurisdiction must be reasonable." *Fields*, 796 F.2d at
13 302. Where the defendant presents "a compelling case that
14 jurisdiction would be unreasonable," there is no need to address the
15 first two prongs of the test. *Id.* On the other hand, "[o]nce
16 purposeful availment has been established, the forum's exercise of
17 jurisdiction is presumptively reasonable. To rebut that presumption,
18 a defendant must present a compelling case that the exercise of
19 jurisdiction would in fact be unreasonable." *Roth v. Garcia Marquez*,
20 942 F.2d 617, 621-22 (9th Cir. 1991).

21 Here, Plaintiff has not made a prima facie case that the Court
22 has specific jurisdiction over either of the Defendants by virtue of
23 their various contacts with Farmers Insurance in Washington.
24 Plaintiff's Complaint does not allege facts showing ZFS or Mr. Schiro
25 have purposefully availed themselves of the privilege of conducting
26 business in Washington state. Further, the Complaint does not allege

1 that ZFS or Mr. Schiro engaged in any of the alleged conduct giving
 2 rise to Mr. Mosely's claims. Rather, this action is premised upon
 3 the Defendants' alleged failure to respond to Mr. Mosely's
 4 accusations of wrongful conduct by others. Given these
 5 circumstances, the Court determines that it cannot exercise specific
 6 personal jurisdiction over the Defendants.

7 2. General Jurisdiction

8 Plaintiff alleges that ZFS exercises "ultimate command and
 9 control functions" over a vast web of subsidiaries, including "Zurich
 10 North America" and Farmers Insurance.² Complaint, ¶3.4. Here, the
 11 Defendants' alleged contacts with Washington state are through its
 12 subsidiary, Farmers Insurance. Therefore, the Court must engage in
 13 an initial inquiry to determine whether those contacts are properly
 14 attributed to the Defendant ZFS.

15 Generally, the mere "existence of a relationship between a
 16 parent company and its subsidiaries is not sufficient to establish
 17 personal jurisdiction over the parent on the basis of the
 18 subsidiaries' minimum contacts with the forum." *Unocal*, 248 F.3d at
 19 925 (citing *United States v. Bestfoods*, 524 U.S. 51, 69, 118 S.Ct.
 20 1876, 141 L.Ed.2d 43 (1998)). Further, "a parental corporation may be
 21 directly involved in the activities of its subsidiaries without
 22 incurring liability so long as that involvement is 'consistent with
 23 the parent's investor status[.]" *Unocal*, 248 F.3d at 926 (citing

25 ² The Defendants maintain that there is no corporate entity
 26 known as Zurich North America. Furthermore, service of process
 was delivered in this case to ZAIC, which is not an agent of ZFS
 for the purpose of accepting service.

1 *Bestfoods*, 524 U.S. at 72, 118 S.Ct. 1876). "Appropriate parental
2 involvement includes: 'monitoring of the subsidiary's performance,
3 supervision of the subsidiary's finance and capital budge decisions,
4 and articulation of the general policies and procedures[.]'" *Id.*
5 However, "if the parent and subsidiary are not really separate
6 entities, or one acts as agent of the other, the local subsidiary's
7 contacts with the forum may be imputed to the foreign parent
8 corporation." *Unocal*, 248 at 926 (citation omitted). "An alter ego
9 or agency relationship is typified by parental control of the
10 subsidiary's internal affairs or daily operations." *Id.*

11 a. *Alter Ego*

12 "To demonstrate that the parent and subsidiary are not really
13 separate entities and satisfy the alter ego exception to the general
14 rule that a subsidiary and the parent are separate entities, the
15 plaintiff must make out a *prima facie* case (1) that there is such
16 unity of interest and ownership that the separate personalities of
17 the two entities no longer exist and (2) that the failure to
18 disregard their separate identities would result in fraud or
19 injustice." *Id.* (citations and quotations omitted). Examples of an
20 alter ego include a parent corporation using its subsidiary to shield
21 itself from liability or a parent corporation dictating "every facet
22 of the subsidiary's business-from broad policy decisions to routine
23 matters of day-to-day operation." *Id.* (citations omitted).

24 Here, the Plaintiff does not argue and has not presented any
25 evidence that Farmers Insurance and Defendant ZFS are alter egos.
26 There is nothing in the record indicating ZFS controls the day-to-day

operations of Farmers Insurance agents in the state of Washington or that ZFS makes policy affecting ZFS local offices.

b. Agency Relationship

In order to satisfy the agency test for purposes of establishing personal jurisdiction, the plaintiff must demonstrate "that the subsidiary functions as the parent corporation's representative in that it performs services that are 'sufficiently important to the foreign corporation that if it did not have a representative to perform them, the corporation's own officials would undertake to perform substantially similar services.'" *Unocal*, 248 at 928 (citations omitted). In other words, if the subsidiary performs the functions that the parent would otherwise have to perform, "but for the existence of the subsidiary," an agency relationships exists.

Id.

Here, ZFS contends that it does not have an agency relationship with Farmers Insurance because ZFS is a holding company rather than a parent corporation. An agency relationship between a parent corporation and its subsidiary is distinguishable from a holding company and its subsidiary. *Id.* at 929. These two types of corporate relationships are distinguishable because

"where a holding company is nothing more than an investment mechanism, i.e., a device for diversifying risk through corporate acquisitions, the subsidiaries conduct business not as its agents but as its investments. The business of the parent is the business of the investment, and that business is carried out entirely at the parent level. Where, on the other hand, the subsidiaries are created by the parent, for tax or corporate finance purposes, there is no basis for distinguishing between the business of the parent and the business of the subsidiaries."

Unocal, 248 F.3d at 929 (citing *Bellomo v. Pennsylvania Life Co.*, 488

1 F.Supp.744, 745 (S.D.N.Y. 1980).

2 Here, Plaintiff does not make out a *prima facie* case that the
3 Farmers Insurance companies in Washington are agents of ZFS for
4 purposes of personal jurisdiction. Plaintiff states merely that ZFS
5 is the ultimate controller of all of the United States companies
6 under it. However, ZFS characterizes itself as a holding company,
7 and Plaintiff presented no evidence to the contrary. Furthermore,
8 there is no evidence that ZFS would step in and perform the functions
9 of Farmers Insurance if the subsidiary was not present in the state
10 of Washington. "At an irreducible minimum, the general agency test
11 requires that the agent perform some service or engage in some
12 meaningful activity in the forum state on behalf of its principal
13 such that its presence substitutes for presence of the principal."
14 *Unocal*, 248 F.3d at 930. Plaintiff has presented no evidence of
15 such. ZFS does not maintain an office, sell insurance policies, pay
16 taxes, or employ anyone in Washington. ZFS does not administer,
17 process, evaluate, adjust, approve, or deny claims on insurance
18 policies issued to Washington Farmers Insurance policy holders.
19 Based on the evidence presented, the Court cannot conclude that an
20 agency relationship exists between ZFS and Farmers Insurance in
21 Washington. For the reasons discussed above, the Court determines it
22 cannot exercise general jurisdiction over the Defendants.
23 Accordingly, the Defendants' motion to dismiss for lack of personal
24 jurisdiction is granted.

25 **IT IS HEREBY ORDERED:**

26 1. To the extent indicated above, the Defendants' Motion to

1 Dismiss, Ct. Rec. 18, is **GRANTED**.

2 2. This action is **DISMISSED WITHOUT PREJUDICE**.

3 3. Any remaining pending motions are **MOOT**.

4 **IT IS SO ORDERED.** The District Court Executive is hereby
5 directed to enter this Order, furnish copies to counsel and the
6 **Plaintiff**, and **CLOSE THE FILE**.

7 **DATED** this 10th day of August, 2005.

8

9 s/ Fred Van Sickle
Fred Van Sickle
10 United States District Judge